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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,213	09/11/2003	Darren T. Sapashe	CM06328J	6551
24273	7590	07/14/2008	EXAMINER	
MOTOROLA, INC 1303 EAST ALGONQUIN ROAD IL01/3RD SCHAUMBURG, IL 60196			FAULK, DEVONA E	
			ART UNIT	PAPER NUMBER
			2615	
			NOTIFICATION DATE	DELIVERY MODE
			07/14/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

APT099@motorola.com
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<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/660,213</p>	<p>Applicant(s) SAPASHE ET AL.</p>	
	<p>Examiner DEVONA E. FAULK</p>	<p>Art Unit 2615</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Vivian Chin/
Supervisory Patent Examiner, Art Unit 2615

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments are not persuasive. Regarding the specification objection, the applicant asserts that the specification provides antecedent basis for " monitoring only background noise levels" and monitoring subsequent background audio level alone" on page 2, lines 18-21. Page 2, lines 18-21 states that " In accordance with the present invention, there is provided herein an improved automatic volume control (AVC) technique for a communication device. In accordance with the present invention, an intelligent automatic volume control technique takes a measurement of the environment (background noise) at the time a user manually selects the volume. A user preference of the volume setting made relative to the background noise experienced is thus established. ". The examiner asserts that this does not read on " monitoring only background noise levels" and monitoring subsequent background audio level alone". The examiner is maintaining the specification objection and the associated claim objection. The examiner stands by the interpretation of the claim used in the rejection (monitoring subsequent background audio levels) and monitoring background noise levels).

Regarding prior art Cooper, the applicant asserts that Cooper fails to teach of switchably engaging a microphone. The examiner disagrees. Cooper teaches in column 4. lines 21-32 that " In accordance with the present invention, the ambient noise level is first examined in step S101. If the ambient noise level is found not to have changed at all or not enough to constitute a change (no in step S102), then the microprocessor 12 skips ahead to step S105, and no action is taken. However, if a new ambient noise level is detected (yes in step S102), the microprocessor fetches audio parameters for the new level from the personality storage (either EEPROM or flash memory) (step S103). In step S104, these parameters are assembled into a message, which is then sent to the DSP 20.

The ambient noise level checked in step S101 is determined in accordance with either the volume setting (determined by the position of the volume knob) or a direct sampling of ambient noise using the digitized microphone audio input 22. With respect to determining the volume setting, it is assumed that a high volume setting is indicative of a high ambient noise level. The microprocessor accesses an audio parameter table including the audio parameters stored in the EEPROM 16 and/or flash memory 18 in accordance with the volume setting or the sampled ambient noise level. "

Therefore Cooper teaches of an implied switching or selectively engaging a microphone which reads on the claim language.

The remainder of the applicant's arguments are moot since the assertions for those arguments revolve around "monitoring only background noise levels" and " monitoring subsequent background audio level alone" which, as noted above, the examiner has interpreted as "monitoring background noise levels" and monitoring subsequent background audio level" due to the lack of antecedent basis. .